IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1493

GLADSTONE REALTORS,
et al.,

Petitioners,

v.

VILLAGE OF BELLWOOD,
et al.,

Respondents.

ROBERT A. HINTZE, REALTORS,
et al.,

Petitioners,

v.

VILLAGE OF BELLWOOD,
et al.,

Respondents.

AMICUS CURIAE BRIEF OF THE NATIONAL LEAGUE OF CITIES AND THE UNITED STATES CONFERENCE OF MAYORS IN SUPPORT OF RESPONDENTS

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INDEX

TABLE OF AUTHORITIES

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SEVENTH CIRCUIT

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Pursuant to Rule 42 of the Rules of this Court, and with the consent of all parties, witness whereof has been made to this Court, the National League of Cities and the United States Conference of Mayors file the annexed brief *amicus curiae,* in support of respondents.

1. INTEREST OF THE NATIONAL LEAGUE OF CITIES AND THE UNITED STATES CONFERENCE OF MAYORS

The decision in this case will determine whether municipalities throughout the country will be able to use Federal Fair Housing and Civil Rights legislation in their fight against racial discrimination. If these Federal remedies are denied municipalities, they will be powerless to act in this field in the absence of State enabling legislation and, in any event, will be powerless to act against discriminatory activities directed within the municipality but originated beyond their boundaries, except in those rare instances where the municipality is specifically authorized by State legislation to act beyond its boundaries.

2. IDENTITY OF THE NATIONAL LEAGUE OF CITIES

The National League of Cities was founded in 1924 by reform minded State Municipal Leagues and constitutes a national organization representing municipal interests before governmental bodies and before this Court. (See National League of Cities v. Usery, 426 U. S. 833 (1976)).

3. IDENTITY OF THE UNITED STATES CONFERENCE OF MAYORS

The United States Conference of Mayors is an organization of city governments represented through their chief elected official, the Mayor. It was organized in 1933 to promote the causes of the city, to foster responsible and effective relationships between city halls and the federal government, and to insure that local governments be responsive to the needs of their citizens and versed in municipal administration. The Conference of Mayors is a national forum through which larger cities

express their concerns and work to meet the needs of urban America. The United States Conference of Mayors is a not-for-profit membership corporation organized under the laws of the State of Illinois, and section 501 (c) (3) of the Internal Revenue Code, 26 U.S.C. 501 (c) (3).

4. PURPOSE OF THIS AMICUS BRIEF

The purpose of this Brief is to deal solely with that aspect of this litigation having to do with the standing of municipalities as Plaintiffs to enforce Sections 1982 and 3612 of Chapter 42 of the United States Code.

ARGUMENT

THE VILLAGE OF BELLWOOD HAS STANDING UNDER SECTIONS 1982, 3604 AND 3612 OF TITLE 42 OF THE UNITED STATES CODE TO BRING THIS ACTION

A. The Village of Bellwood is a party aggrieved by the racial steering of the Defendants.

In addition to the arguments on this point of the Respondent, Village of Bellwood, the following comments are made:

The entire community is involved as a victim when racial steering occurs as indicated in the decision in *Trafficante v. Metropolitan Life Insurance Co.*, 409 U. S. 205 (1972) where it is stated as follows:

> The person on the landlord's blacklist is not the only victim of discriminatory housing practices; it is as Senator Javits said in supporting the Bill 'the whole community,' 114 Congressional Record, 2706, and as Senator Mondale, who drafted Section 810a, said, the reach of the proposed law was to replace the ghettos 'by truly integrated and balanced living patterns.' (page 211)

Thus, it is not individuals alone who are damaged by the practices of racial steering, it is "the whole community".

This is not a case of the Village seeking to enforce the rights of others—it is a case of the community as a whole in its own right seeking to enforce its policy of fair housing. Blockbusting and racial steering are not primarily offenses against the individual. They are practices that destroy integrated housing and create segregated blight as indicated in *United States v. Bob Lawrence Realty, Inc.*, 474 F. 2nd 115, (5th Cir.),

cert. denied, 414 U. S. 826 (1973), the first Circuit Court of Appeals case dealing with this aspect of the Federal Fair Housing Act where the Court stated as follows:

> The anti-blockbusting statute, §3604(e), is an attempt by Congress to disprove the belief, held by many, that the Thirteenth Amendment made a promise the Nation cannot keep. Integrated housing is deemed by many to be an a priori requirement before our schools can be realistically integrated. . . . (I)t is indisputable that white flight is a blight upon the democratized society we envision and this Congressional Act is in the mainstream of that vision. (page 127)

The "blight" to which the Court refers is a community problem.

Apart from the community's desire to enforce fair housing, it has in fact a duty to do so, as indicated in the Circuit Court of Appeals decision in *Gautreaux v. City of Chicago,* 480 F. 2d 210 (7th Cir.) (1973), in the concurring opinion of Chief Justice Swygert:

> It is today well established that the failure of a municipality to alleviate racial imbalance in housing may be as grievous a violation of the equal protection clause as is direct action by a public body to advance discrimination among the races. (page 216)

B. Congress did not intend to exclude municipalities as Plaintiffs under Sections 1982 and 3612 of Chapter 42 of the United States Code.

In the Petitioners' Brief, the following statement is made at page 18:

> Congress obviously intended to limit the applicability of Section 3612 to suits by 'private persons' because municipal corporations have traditionally been responsible for housing matters and, as instrumental-

> ities of the state, they have alternative means for achieving fair housing objectives. See McQuillin, supra, §1.74. In Illinois, the legislature has delegated broad powers to its political subdivisions to prohibit discrimination in housing. See Ill. Rev. Stats. ch. 24, §11-11.1-1 (1977); id., ch. 111, §5742 (1977).

From this statement, the realtors argue that Congress in adopting the Federal Fair Housing Act contemplated that municipalities would pursue their remedies under local ordinances, so there was no need to provide any remedy to municipalities under the Federal Act. In support of this proposition, the Fair Housing enabling legislation in Illinois is cited (Ill. Rev. Stats. Ch. 24, §11-11.1-1). This enabling legislation, however, was not in existence when the Federal Fair Housing Act was passed, nor was there any State statute in Illinois covering fair housing. In the absence of that enabling legislation, the City of Chicago Fair Housing Ordinance was held unconstitutional, *Two Hundred Nine Lake Shore Building Corporation v. City of Chicago,* 3 Ill. App. 3rd 46 (1972). Thus, contrary to the realtor's position, the only remedy in 1968 available to an Illinois municipality to enforce a fair housing policy in Illinois was the Federal Fair Housing law.

Even the right to license and regulate realtors has been denied to Illinois Cities and Villages under local law. *Andruss v. City of Evanston,* 68 Ill. 2d 215 (1977).

As further insight into the availability of local remedies at the time of the passage of the Federal Fair Housing Act, we would refer to the then famous Proposition 14 where California adopted the following amendment to its State Constitution:

> Neither the State nor any subdivision or agency thereof shall deny, limit or abridge, directly or indirectly, the right of any person, who is willing or

> desires to sell, lease or rent any part or all of his real property, to decline to sell, lease or rent such property to such person or persons as he, in his absolute discretion, chooses.

Fortunately, this constitutional amendment was held unconstitutional by this Court in *Reitman v. Mulkey,* 387 U. S. 369 (1966). With this type of local atmosphere prevailing in so called liberal states, it is hardly likely that Congress was placing heavy reliance on the ability of municipalities to rely on State enabling fair housing legislation at that time. This Court moreover recognized the economic pressures working against an integrated society as indicated in the concurring opinion of Justice Douglas in the *Reitman* decision as follows:

> Property owners' prejudices are reflected, magnified, and sometimes even induced by real estate brokers, through whom most housing changes hands. Organized brokers have, with few exceptions, followed the principle that only a 'homogeneous' neighborhood assures economic soundness. Their views in some cases are so vigorously expressed as to discourage property owners who would otherwise be concerned only with the color of a purchaser's money, and not with that of his skin. (page 382)

In addition to the required State enabling legislation, the Federal law is the only remedy available to municipalities to combat steering and blockbusting practices that emanate outside their boundaries, a most frequent occurrence in highly developed urban areas.

The realtors further argue that a municipality is not a proper Plaintiff under Section 1982. *Monroe v. Pape,* 365 U. S. 167 (1961) is cited on page 27 of their Brief in support of this position. The principal holding of *Monroe v. Pape* was that a municipality was immune from suit under Section 1983 of Chapter 42. In *Monell v. Dept. of Soc. Serv. of City of N.Y.*,

98 S.Ct. 2018 (1978), this Court has now reversed that provision of the holding of *Monroe v. Pape.* Although *Monell* considers whether a municipality is a "person" subject to suit under Section 1983 of Chapter 42 which was passed in 1870, the decision is relevant in considering Section 1982 passed in 1866 because it deals with the question of the applicability of Federal Civil Rights legislation to municipalities and construes the intent of Congress during that same critical period of our history. The following statements of this Court in *Monell*, therefore, shed some light on the applicability of 1982 to municipalities as a party Plaintiff:

> Because §1 (1983) of the Civil Rights Act does not state expressly that municipal corporations come within its ambit, it is finally necessary to interpret §1 to confirm that such corporations were indeed intended to be included within the 'persons' to whom that section applies. (page 2025)

This Court quotes from the Congressional debates statements showing the inter-relationship of the 1866 and 1870 Acts:

> Where a power is remedial in its nature there is much reason to contend that it ought to be construed liberally, and it is generally adopted in the interpretation of laws.'—1 Story on Constitution, sec. 429. Globe App., at 68.
>
> The sentiments expressed in Representative Shellabarger's opening speech were echoed by Senator Edmunds, the manager of H. R. 320 in the Senate:
>
> 'The first section is one that I believe nobody objects to, as defining the rights secured by the Constitution of the United States when they are assailed by any State law or under color of any State law, and it is merely carrying out the principles of the civil rights bill (of 1866), which have since become a part of the Constitution. Globe, at 568.' (page 2033)

On page 2034, this Court deals directly with the question of whether municipal corporations were treated as natural persons during the period of passage of Sections 1982 and 1983:

> In addition, by 1871, it was well understood that corporations should be treated as natural persons for virtually all purposes of constitutional and statutory analysis. This had not always been so. When this Court first considered the question of the status of corporations, Chief Justice Marshall, writing for the Court, denied that corporations 'as such' were persons as that term was used in Art. III and the Judiciary Act of 1789. See *Bank of the United States v. Deveaux,* 5 Cranch 61, 86 (1809). By 1844, however, the *Deveaux* doctrine was unhesitatingly abandoned:
>
> > '(A) corporation created by and doing business in a particular state, is to be deemed to all intents and purposes as a person, although an artificial person, . . . capable of being treated as a citizen of that state, as much as a natural person.' *Louisville R. Co. v. Letson*. 2 How. 497, 558 (1844) (emphasis added), discussed in Globe, at 752.
>
> And only two years before the debates on the Civil Rights Act, in *Cowles v. Mercer County,* 7 Wall. 118, 121 (1869), the Letson principle was automatically and without discussion extended to municipal corporations. Under this doctrine, municipal corporations were routinely sued in the federal courts and this fact was well known to Members of Congress. (page 2034)

Therefore, in construing Section 1983, this Court has determined that there was no Congressional intent to except municipalities from liability. Under what theory can it be argued that Congress intended to exclude municipalities from the right to enforce 1982 and 3612 when it can be shown the municipality has been damaged as a community by Civil Rights violations?

CONCLUSION

If the Defendants are successful in their program of racial steering, the net effect can only be that a community attempting to enforce fair housing legislation will ultimately become resegregated. In the final analysis, the municipality is the principal victim and, therefore, is the principal party in interest in defending against racial steering. It is inconceivable that it is our national policy that Congress intended that such a municipality would not have available the Federal statutory remedies of 3612 and 1982 to combat these practices.

Respectfully submitted,

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